



CHAIRMAN

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

February 23, 1994

The Honorable Albert Gore, Jr.
President of the United States Senate
Washington, D.C. 20510

Dear Mr. President:

The Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, requires the Nuclear Regulatory Commission for fiscal years 1991 through 1998 to recover approximately 100 percent of its budget authority, less the amount appropriated from the Nuclear Waste Fund, by assessing fees to NRC applicants and licensees. The Energy Policy Act of 1992 (EPA-92) directed the NRC to review its policy for assessment of annual charges under OBRA-90, solicit public comment on the need for changes to this policy, and recommend to the Congress any changes needed in existing law to prevent placing an unfair burden on NRC licensees. The enclosed report presents the results of the NRC fee policy review.

Consistent with the requirements of EPA-92, the NRC requested public comment on its fee policy and received a total of 566 comments. The enclosed report not only considered these comments but also our experience during the past three years in implementing OBRA-90. This includes the evaluation of over 1,000 public comments on previous fee-related rules, the responses to over 5,000 letters and phone calls on fees, a judicial decision, two petitions for rulemaking, and an NRC Office of the Inspector General (OIG) review of the fee program.

Based on an assessment of this information, two major concerns relating to the fairness and equity of the NRC fees have been identified in the report. The first major concern is that not all direct beneficiaries of NRC activities pay fees. Therefore, for NRC to recover 100 percent of its budget, some licensees pay for activities that do not benefit them. The second major concern is that fees are based on the agency's costs of performing its regulatory responsibilities rather than on the licensees' perception of benefits received. This leads some licensees to conclude that fees for regulatory activities related to them are not commensurate with the benefits received.

Licensees have consistently noted that they are billed for costs not directly related to providing services to them. This concern arises because costs for some NRC activities are not assessed to the beneficiaries of those activities due to legislative constraints and Commission policy. The fees at issue are for

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certain international activities, oversight of and generic regulatory support to the Agreement State program, the legislative fee exemption for Federal agencies, the Commission fee exemption for nonprofit educational institutions, and the Commission fee reduction for small entities. In this sense, the legislative requirement to collect 100 percent of the budget authority through fees inherently places an unfair burden on licensees.

In addition, some licensees believe that the benefits received are not commensurate with the NRC fees they are assessed. This issue is raised most frequently by materials licensees. On the basis of NRC's three years of experience administering the annual fees for the materials program and the comments received on the fee policy notice, the report concludes that there is merit to the claim that fees are not commensurate with benefits in the NRC materials regulatory program area, which supports both NRC and Agreement State licensees. However, only NRC licensees pay fees to recover the cost of these activities. Because many Agreement States adopt NRC regulations, NRC activities also provide the regulatory basis for the 29 Agreement States to regulate their 16,000 materials licensees. Nevertheless, under OBRA-90, the NRC cannot charge Agreement States or their licensees an annual fee because they are not NRC licensees. Therefore, only about 30 percent (7,000 NRC licensees of the total population of 23,000) of all materials licensees can be assessed annual charges to recover the cost of generic activities supporting both NRC and Agreement State licensees. As a result, part of the costs (about \$15 million in FY 1993 fees) for these generic regulatory activities that are included in the annual fees for NRC materials and uranium recovery licensees could be considered an unfair burden on NRC licensees.

The enclosed report evaluates several options for resolving these concerns about the fairness and equity of the NRC's fee policies. The alternatives would allow licensees to avoid paying for NRC budgeted activities that do not benefit them by either (1) relaxing the requirement to collect 100 percent of the budget, or (2) expanding the fee assessment to other beneficiaries of NRC activities. Based on an evaluation of these alternatives, the enclosed report concludes that a combination of these alternatives is appropriate. Specifically, the report recommends the following changes in existing law to prevent placing an unfair burden on certain licensees:

Modify the Omnibus Budget Reconciliation Act of 1990 to:

- remove from the fee base costs for international activities, Agreement State oversight, the exempted fees for nonprofit educational institutions, and the

amount of the fee reduction for small entities. This would minimize the major concern associated with NRC licensees paying for activities that do not benefit them.

- remove from the fee base a portion of the cost of generic regulatory activities that support NRC and Agreement States material licensees. This would eliminate the concern that NRC materials license fees, which support the regulation of both NRC and Agreement State licensees, are not commensurate with benefits received.

So that other NRC licensees do not have to pay for the cost of services not benefitting them, the report also recommends that either OBRA-90 be modified to eliminate from the fee base costs for services to other Federal agencies or the Atomic Energy Act be modified to permit NRC to assess application and other fees for specific services rendered to all Federal agencies.

The net result of these legislative changes to OBRA-90 would be to require NRC to recover approximately 90 percent of its budget authority through the assessment of fees. In FY 1993 budgeted dollars, this would mean that \$40-45 million of new budget authority would have been obtained from general revenues rather than from fees. These dollar and percentage amounts are illustrative; the actual amounts for any fiscal year would depend on the budget for the activities excluded from the fee base.

In addition to the above legislative changes, the Commission is taking the following actions, which do not require legislation, to improve the fairness and equity of its fee policies:

- Amending the fee regulations to prorate the annual fee if a licensee's operating authority is removed from the license during the fiscal year and also assess a prorated annual fee to those licensees who are issued a new license during the fiscal year.
- In response to a petition, proposing reinstatement of the exemption for nonprofit educational institutions.
- Reevaluating its small entity size standards and considering adopting a recently proposed Small Business Administration standard which would increase the number of licensees eligible for reduced fees and create different standards for manufacturing and service industries. This would mitigate concerns expressed by NRC licensees regarding their inability to qualify as small entities under current NRC size standards.

- Continuing to explore means for minimizing large year-to-year fluctuations in licensee fees and to more fully explain changes in fees. This includes using improved cost accounting techniques and continually examining the structure of the fees to ensure that any large increases are justified.

In addition to legislative changes to address the major concerns about fairness and equity of the NRC fee schedules, the report identifies another major concern not directly related to fairness and equity. This concern relates to the efficiency and complexity of the fee process.

The enclosed report and the NRC Office of the Inspector General's review of fees have concluded that there are substantial benefits to be gained from a simpler fee structure. These benefits include more efficient fee collection and better understanding of fees by the licensees. Based on an evaluation of several options, the report concludes that assessment of a single annual fee for most of NRC's budgeted activities should be pursued. The report notes that such an approach can be implemented without creating substantive fairness and equity concerns because the overall service provided by the NRC would be based on the total regulation of specific classes of licensees, including inspection, research, rulemaking, license amendments, and other activities. To accomplish this, OBRA-90 needs to be modified to eliminate the requirement for NRC to assess fees in accordance with the Independent Offices Appropriation Act.

The Commission believes that to improve the fairness and equity of the current fee policy, changes to existing law should be made. However, the Commission is aware that further work is required to address the budgetary impacts resulting from modifying OBRA-90, as amended by the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66). The President's budget also proposes extending the current fee law. As indicated to the Congress in my letter dated July 7, 1992, the Commission believes that, absent changes to the existing legislation that would give NRC more flexibility, the complex fee process of recovering approximately 100 percent of our budget authority cannot be substantially improved. The Commission agrees with the commenters that the root cause of the concerns about fairness and equity is the inflexible requirement to recover 100 percent of the budget as well as the potential for actual or perceived loss of Commission independence. To address effectively the identified concerns about fairness and equity, the Commission agrees with the report that modifications to OBRA-90 are necessary that would reduce the requirement to collect 100 percent of the budget by deleting the cost for specific activities from the fee base. Based on the FY 1993 budget, this

would mean that approximately 90 percent of the budget would be recovered through fees. The Commission notes that budgetary changes that would result from implementing this change to OBRA are not included in the FY 1995 President's Budget and would, in turn, not be consistent with the President's Budget. We will be working with the Office of Management and Budget to address the budgetary impacts that would result from any changes to OBRA-90, including any effect on spending caps. The Commission also supports the conclusion that modification of OBRA-90 to give the Commission the flexibility to create a simpler structure would benefit both NRC and its licensees while still providing an adequate framework for the creation of fair and equitable fees for the various classes of licensees.

The Commission appreciates the opportunity to provide this report on this important matter.

Sincerely,



Ivan Selin

Enclosures:
As stated



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WASHINGTON, D. C. 20555

February 23, 1994

The Honorable Thomas S. Foley
Speaker of the United States
House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

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Consistent with the requirements of EPA-92, the NRC requested public comment on its fee policy and received a total of 566 comments. The enclosed report not only considered these comments but also our experience during the past three years in implementing OBRA-90. This includes the evaluation of over 1,000 public comments on previous fee-related rules, the responses to over 5,000 letters and phone calls on fees, a judicial decision, two petitions for rulemaking, and an NRC Office of the Inspector General (OIG) review of the fee program.

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Licensees have consistently noted that they are billed for costs not directly related to providing services to them. This concern arises because costs for some NRC activities are not assessed to the beneficiaries of those activities due to legislative constraints and Commission policy. The fees at issue are for

certain international activities, oversight of and generic regulatory support to the Agreement State program, the legislative fee exemption for Federal agencies, the Commission fee exemption for nonprofit educational institutions, and the Commission fee reduction for small entities. In this sense, the legislative requirement to collect 100 percent of the budget authority through fees inherently places an unfair burden on licensees.

In addition, some licensees believe that the benefits received are not commensurate with the NRC fees they are assessed. This issue is raised most frequently by materials licensees. On the basis of NRC's three years of experience administering the annual fees for the materials program and the comments received on the fee policy notice, the report concludes that there is merit to the claim that fees are not commensurate with benefits in the NRC materials regulatory program area, which supports both NRC and Agreement State licensees. However, only NRC licensees pay fees to recover the cost of these activities. Because many Agreement States adopt NRC regulations, NRC activities also provide the regulatory basis for the 29 Agreement States to regulate their 16,000 materials licensees. Nevertheless, under OBRA-90, the NRC cannot charge Agreement States or their licensees an annual fee because they are not NRC licensees. Therefore, only about 30 percent (7,000 NRC licensees of the total population of 23,000) of all materials licensees can be assessed annual charges to recover the cost of generic activities supporting both NRC and Agreement State licensees. As a result, part of the costs (about \$15 million in FY 1993 fees) for these generic regulatory activities that are included in the annual fees for NRC materials and uranium recovery licensees could be considered an unfair burden on NRC licensees.

The enclosed report evaluates several options for resolving these concerns about the fairness and equity of the NRC's fee policies. The alternatives would allow licensees to avoid paying for NRC budgeted activities that do not benefit them by either (1) relaxing the requirement to collect 100 percent of the budget, or (2) expanding the fee assessment to other beneficiaries of NRC activities. Based on an evaluation of these alternatives, the enclosed report concludes that a combination of these alternatives is appropriate. Specifically, the report recommends the following changes in existing law to prevent placing an unfair burden on certain licensees:

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- remove from the fee base a portion of the cost of generic regulatory activities that support NRC and Agreement States material licensees. This would eliminate the concern that NRC materials license fees, which support the regulation of both NRC and Agreement State licensees, are not commensurate with benefits received.

So that other NRC licensees do not have to pay for the cost of services not benefitting them, the report also recommends that either OBRA-90 be modified to eliminate from the fee base costs for services to other Federal agencies or the Atomic Energy Act be modified to permit NRC to assess application and other fees for specific services rendered to all Federal agencies.

The net result of these legislative changes to OBRA-90 would be to require NRC to recover approximately 90 percent of its budget authority through the assessment of fees. In FY 1993 budgeted dollars, this would mean that \$40-45 million of new budget authority would have been obtained from general revenues rather than from fees. These dollar and percentage amounts are illustrative; the actual amounts for any fiscal year would depend on the budget for the activities excluded from the fee base.

In addition to the above legislative changes, the Commission is taking the following actions, which do not require legislation, to improve the fairness and equity of its fee policies:

- Amending the fee regulations to prorate the annual fee if a licensee's operating authority is removed from the license during the fiscal year and also assess a prorated annual fee to those licensees who are issued a new license during the fiscal year.
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In addition to legislative changes to address the major concerns about fairness and equity of the NRC fee schedules, the report identifies another major concern not directly related to fairness and equity. This concern relates to the efficiency and complexity of the fee process.

The enclosed report and the NRC Office of the Inspector General's review of fees have concluded that there are substantial benefits to be gained from a simpler fee structure. These benefits include more efficient fee collection and better understanding of fees by the licensees. Based on an evaluation of several options, the report concludes that assessment of a single annual fee for most of NRC's budgeted activities should be pursued. The report notes that such an approach can be implemented without creating substantive fairness and equity concerns because the overall service provided by the NRC would be based on the total regulation of specific classes of licensees, including inspection, research, rulemaking, license amendments, and other activities. To accomplish this, OBRA-90 needs to be modified to eliminate the requirement for NRC to assess fees in accordance with the Independent Offices Appropriation Act.

The Commission believes that to improve the fairness and equity of the current fee policy, changes to existing law should be made. However, the Commission is aware that further work is required to address the budgetary impacts resulting from modifying OBRA-90, as amended by the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66). The President's budget also proposes extending the current fee law. As indicated to the Congress in my letter dated July 7, 1992, the Commission believes that, absent changes to the existing legislation that would give NRC more flexibility, the complex fee process of recovering approximately 100 percent of our budget authority cannot be substantially improved. The Commission agrees with the commenters that the root cause of the concerns about fairness and equity is the inflexible requirement to recover 100 percent of the budget as well as the potential for actual or perceived loss of Commission independence. To address effectively the identified concerns about fairness and equity, the Commission agrees with the report that modifications to OBRA-90 are necessary that would reduce the requirement to collect 100 percent of the budget by deleting the cost for specific activities from the fee base. Based on the FY 1993 budget, this

would mean that approximately 90 percent of the budget would be recovered through fees. The Commission notes that budgetary changes that would result from implementing this change to OBRA are not included in the FY 1995 President's Budget and would, in turn, not be consistent with the President's Budget. We will be working with the Office of Management and Budget to address the budgetary impacts that would result from any changes to OBRA-90, including any effect on spending caps. The Commission also supports the conclusion that modification of OBRA-90 to give the Commission the flexibility to create a simpler structure would benefit both NRC and its licensees while still providing an adequate framework for the creation of fair and equitable fees for the various classes of licensees.

The Commission appreciates the opportunity to provide this report on this important matter.

Sincerely,



Ivan Selin

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